

**RICHARD A. SMITH, WSBA 15127**  
**SMITH LAW FIRM**  
**314 No. Second Street**  
**Yakima, WA 98901**  
**Telephone: 509-457-5108**

Attorneys for Defendant  
Roman Berumen Perez

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON  
(Hon. Stanley A. Bastian)**

UNITED STATES OF AMERICA,	)	NO. 1:21-CR-02009-SAB
	)	
Plaintiff,	)	
	)	OBJECTION TO CONTINUANCE
vs.	)	AND MOTION TO SEVER CASE
	)	FOR TRIAL
	)	
ROMAN BERUMEN PEREZ,	)	
	)	DATE: April 6, 2021
Defendant.	)	TIME: 1:30 P.M.

**TO: Clerk**, U.S. District Court, Eastern District of Washington; and  
**TO: Ian Garriques**, Assistant United States Attorney; and

**COMES NOW** ROMAN BERUMEN PEREZ through his attorney,  
Richard A. Smith of *Smith Law Firm*, and moves this Court to sever his case from  
the case of Noe Rubio-Farrias.

This motion is made based upon Federal Rule of Criminal Procedure 14 and  
the Memorandum of Points and Authorities submitted with this Motion.

OBJECTION TO CONTINUANCE AND MOTION TO  
SEVER CASE FOR TRIAL – Page 1

**SMITH LAW FIRM**  
314 North Second Street  
Yakima, WA 98901  
(509) 457-5108

1 DATED this 30th day of March, 2021.

2 Presented by: *Smith Law Firm*

3  
4 /s/ RICHARD A. SMITH

5 RICHARD A. SMITH, WSBA 15127

6 Attorney for Defendant Perez

7  
8 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**  
9 **MOTION TO SEVER CASE FOR TRIAL**

10 **I. PROCEDURAL SUMMARY.**

11 An Indictment [ECF 27] was filed in this case on February 9, 2021, charging  
12 Roman Berumen Perez with Count 1 Conspiracy to Distribute 5 Grams or More of  
13 Actual (Pure) Methamphetamine and Count 8 Distribution of 5 Grams or More of  
14 Actual (Pure) Methamphetamine.

15  
16 Roman Berumen Perez was arraigned on the Indictment on February 17, 2021  
17 and ordered detained [ECF 44]. On March 25, 2021, co-defendant Noe Rubio-Farrias  
18 filed his motion to continue requesting a trial date of September 13, 2021, and a  
19 pretrial conference date of September 1, 2021 [ECF 47].

20 Roman Berumen Perez now requests that his case be severed from his co-  
21 defendant and that he be allowed to proceed to trial on April 19, 2021.

22  
23 **II. LEGAL ARGUMENT.**

24 Rule 14 of the Federal Rule of Criminal Procedure provides:

25 Relief from prejudicial joinder. If it appears that a defendant or the  
26 government is prejudiced by a joinder of offenses or of defendants in  
27 an indictment or information or by such joinder for trial together, the  
28 court may order an election or separate trials of counts, grant a  
29 severance of the defendants or provide what other relief justice  
30 requires.

1 Severance for prejudicial joinder under Rule 14 is discretionary. See, e.g., *United*  
2 *States v. Lutz*, 621 F.2d 940 (9<sup>th</sup> Cir. 1980).

3 If it appears that a defendant is prejudiced by joinder of defendants in an  
4 indictment or by joinder for trial together, the court may grant a severance or provide  
5 whatever other relief justice requires. See, e.g., *United States v. Escalante*, 637 F.2d  
6 1197, 1201 (9<sup>th</sup> Cir. 1980); *United States v. Lutz*, 621 F.2d 940 (9<sup>th</sup> Cir. 1980); *United*  
7 *States v. Tousant*, 619 F.2d 810 (9<sup>th</sup> Cir. 1980).

8  
9 Roman Berumen Perez submits that his trial should be severed from his co-  
10 defendant for the following reason: The jury is likely to find Roman Berumen Perez  
11 guilty by association with the activities and conduct of Noe Rubio-Farrias.

12 1. The jury may find Roman Berumen Perez guilty by association.

13 It is extraordinarily difficult for a jury to follow admonishing instructions to  
14 keep separate evidence that is relevant only to co-defendants.

15 A co-defendant in a conspiracy trial occupies an uneasy seat. There  
16 generally will be evidence of wrong doing by somebody. It is  
17 difficult for the individual to make his own case stand on its own  
18 merits in the minds of jurors who are ready to believe that birds of a  
19 feather flock together.

20 *Krulewitch v. United States*, 336 U.S. 440, 454 (1949).

21 Here the above-noted statement is especially true. The Indictment charges a  
22 conspiracy from July 8, 2020 ending on December 8, 2020. Mr. Berumen Perez  
23 allegedly makes one appearance in the charged conspiracy on December 8, 2020.

24 If the Court requires Mr. Berumen Perez to proceed to trial with his co-  
25 defendant, he will be placed in a position of attempting to defend himself against the  
26 implications of numerous criminal acts alleged to be committed by his co-defendant.  
27  
28  
29

1 The fact that the co-defendant needs additional time to September of 2021 simply  
2 demonstrates the disparity in evidence.

3 2. Participation in this conspiracy.

4 The co-defendant needs additional time because of the volume of discovery  
5 most of which is directed at Noe Rubio-Farrias. Mr. Berumen Perez does not need  
6 additional time to prepare his case for trial and consequently objects to the  
7 continuance.  
8

9 DATED this 30th day of March, 2021.  
10

11 Presented by: *Smith Law Firm*

12 /s/ RICHARD A. SMITH

13 RICHARD A. SMITH, WSBA 15127

14 Attorney for Defendant Perez  
15  
16  
17  
18  
19  
20  
21

22 CERTIFICATE OF SERVICE

23 I hereby certify under penalty of perjury of the laws of the State of Washington  
24 that on March 30, 2021, I electronically filed the foregoing with the Clerk of the Court  
25 using the CM/ECF System which will send notification of such filing to the  
26 following: Ian Garriques, Assistant United States Attorney.

27 /s/ Lugene M. Borba

28 LUGENE M. BORBA

29 Legal Assistant to Richard A. Smith  
30

31 OBJECTION TO CONTINUANCE AND MOTION TO  
SEVER CASE FOR TRIAL – Page 4

**SMITH LAW FIRM**  
314 North Second Street  
Yakima, WA 98901  
(509) 457-5108